

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE) Docket No. 18 C 7686
LION AIR FLIGHT JT 610 CRASH) and related cases
This Document Relates To:) Chicago, Illinois
All Actions) April 30, 2019
9:04 a.m.

TRANSCRIPT OF PROCEEDINGS - Motion Hearing
BEFORE THE HONORABLE THOMAS M. DURKIN

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1 (In open court.)

2 THE CLERK: 18 C 7686, In re Lion Aircraft.

3 THE COURT: All right. Good morning. Let's have
4 everyone identify themselves for the record, starting first
5 with -- since there are fewer of them, let's start with defense
6 counsel.

7 MR. SHULTZ: Good morning, your Honor. Mack Shultz on
8 behalf of The Boeing Company.

9 MS. LARSON: Good morning, your Honor. Bates Larson,
10 also on behalf of The Boeing Company.

11 THE COURT: All right. Then let's have all the
12 plaintiffs' attorneys identify themselves, starting from
13 Mr. Caruso on the far right, my right.

14 MR. CARUSO: Good morning, Judge. Carmen Caruso.

15 We filed the complaint 18 C 2774 [sic], which was
16 reassigned to you last week. And I'm really here to introduce
17 Mark Lindquist from the West Coast, who is going to be lead
18 counsel on that case.

19 THE COURT: All right.

20 MR. LINDQUIST: Good morning, your Honor.

21 THE COURT: All right.

22 MR. BARTLETT: Good morning, your Honor. Austin
23 Bartlett on behalf of certain plaintiffs in the case.

24 MR. WRONA: Good morning, your Honor. John Wrona on
25 behalf of Harvino, the copilot.

1 MR. STEVENS: Good morning, your Honor. Andrew
2 Stevens, S-T-E-V-E-N-S, from Corboy & Demetrio on behalf of
3 plaintiff Gitelson, 19 CV 622.

4 MS. KELLY: Good morning, your Honor. Monica Kelly of
5 Ribbeck Law on behalf of certain plaintiffs.

6 THE COURT: All right. Good morning.

7 MR. McARDLE: Good morning, your Honor. Tim McArdle
8 on behalf of certain plaintiffs.

9 MR. HART: Good morning, your Honor. Steven Hart,
10 Hart, McLaughlin & Eldridge, on behalf of 11 victims of the
11 crash.

12 THE COURT: All right.

13 MR. MARKS: Good morning, your Honor. Steve Marks
14 with Podhurst Orseck. I'm here with Kristina Infante from my
15 office and Dayron Silverio.

16 THE COURT: All right. Good morning.

17 Well, thank you all for coming in. This was
18 occasioned by a motion by the defendants to get Boeing to
19 either file their motion for *forum non conveniens* or abandon
20 it.

21 The motion to sequence discovery was entered and
22 continued when it was filed last time because we had a lot of
23 cases that were outstanding that I understood would eventually
24 end up in front of me. I think that process is still ongoing.

25 Can anyone give me a report on -- two things. One, I

1 understood there may have been a case filed in either state or
2 federal court in Washington State. And then, two, are there
3 more cases in the Circuit Court of Cook County that are going
4 to be removed? And, three, are there additional cases before
5 other judges in this building that are subject of a motion to
6 reassign that has not yet been granted?

7 If -- maybe Boeing can take the lead on that since
8 you're in all of them.

9 MR. SHULTZ: Thank you, your Honor.

10 With respect to the matter that was originally filed
11 in Washington, that matter was voluntarily dismissed and has
12 been refiled in this court and either is before your Honor or
13 on its way to your Honor.

14 THE COURT: All right. Well, that's good to know
15 because that would have -- had it remained, it would be likely
16 the subject of a request to have this case heard as an MDL.

17 MR. SHULTZ: Correct.

18 THE COURT: And if all the cases are here, there's no
19 need to get involved in MDL proceedings to consolidate cases
20 from different districts. And as far as you know, are there
21 any other cases anywhere else in the country?

22 MR. SHULTZ: We are unaware of any other cases
23 anywhere else in the country, other than a handful of cases
24 which remain in Cook County that we expect to remove to this
25 Court in the next seven to ten days.

1 THE COURT: Do any plaintiffs' counsel know of
2 anything different than that?

3 MR. CARUSO: Judge, I would just inform the Washington
4 State case is here. Mr. Lindquist, it was his case.

5 THE COURT: Okay. And that's been dismissed in
6 Washington State?

7 MR. LINDQUIST: That was correct, your Honor. Thank
8 you.

9 THE COURT: Okay.

10 All right. Go ahead.

11 MR. SHULTZ: We're aware of a total of, I believe at
12 the last time we counted, 48 cases, all of which are on their
13 way to your Honor, involving 92 of the people who were on board
14 the aircraft.

15 Cases continue to be filed. We had two filed,
16 actually, on the day that plaintiffs filed their motion that
17 brings us here today.

18 As to whether there are additional cases that remain
19 to be filed, we would expect so because only about half the
20 aircraft has been accounted for. But we don't know that for
21 sure.

22 THE COURT: All right. Are there cases that have been
23 filed in Indonesia?

24 MR. SHULTZ: We're unaware of any cases in Indonesia,
25 but plaintiffs' counsel might actually have better information

1 on that than we do.

2 MR. BARTLETT: None --

3 THE COURT: Any knowledge?

4 MR. BARTLETT: None that we're aware of.

5 THE COURT: Okay. So at least as it stands right now,
6 it looks like the majority or all of the cases are going to end
7 up sooner or later in federal court and in front of me that are
8 being filed relating to this crash, correct?

9 MR. SHULTZ: That's our expectation right now, your
10 Honor.

11 THE COURT: All right. Any reason to differ from that
12 from any on the plaintiffs?

13 MR. HART: No, your Honor.

14 THE COURT: Okay. Hearing none -- hearing nothing, I
15 assume that's the case. All right.

16 All right. Then we're here on the motion -- a joint
17 motion. I assume it's joined in by everyone who is here. Is
18 that correct?

19 MULTIPLE COUNSEL: That's correct.

20 Yes, your Honor.

21 THE COURT: Okay. I guess the record can just reflect
22 unanimous assent by all the present plaintiffs.

23 All right. And then also I saw there was a
24 shareholders' case filed. Where is that?

25 MR. SHULTZ: I'm afraid I don't have good information

1 on the current status of the shareholders' case. We're not
2 representing the company in that proceeding, your Honor.

3 THE COURT: Okay.

4 MR. MARKS: Your Honor, Steve Marks.

5 There are news reports it's in the Northern District
6 in Illinois.

7 THE COURT: Okay. I would expect it would be. I was
8 just curious. It's not in front of me that I've -- as far as I
9 know.

10 All right. Does Boeing --

11 MR. BARTLETT: Your Honor, I'm sorry to interrupt. I
12 believe that case is before Judge Tharp.

13 THE COURT: Okay. All right. Thank you.

14 Does Boeing object to the request that it either file
15 or abandon its motion to dismiss for *forum non conveniens*?

16 MR. SHULTZ: Yes, your Honor.

17 THE COURT: All right. What's your basis for opposing
18 it?

19 MR. SHULTZ: Your Honor, it's actually routine
20 practice in aviation accident litigation involving foreign air
21 crashes for a motion limiting discovery to be entered before
22 the *forum non conveniens* motion is filed.

23 In the Malaysia 370 litigation that was in the
24 District of Columbia that involved Mr. Marks' firm and the
25 Wisner firm, Judge Jackson there entered an order limiting

1 discovery to the threshold issues, and then the defendants
2 filed their *forum non conveniens* motion, as well as the airline
3 filed certain jurisdictional motions as well.

4 In the litigation arising out of the Helios
5 accident --

6 THE COURT: Well, do you need discovery to file your
7 *forum non conveniens* motion?

8 MR. SHULTZ: We do plan to serve some limited
9 discovery, interrogatories and requests for admission, to
10 determine where the damages evidence and witnesses are located.
11 We believe it is all in Indonesia, but we don't know that for
12 sure, and we don't --

13 THE COURT: Well, it's almost certainly going to be
14 Indonesia or somewhere other than Northern District of
15 Illinois. If you go on that assumption, that satisfies what
16 you need to put in for purposes of your *forum non conveniens*.
17 It's not dispositive, but at least that element of your motion
18 is pretty well agreed to, I would think. And if there's a
19 reason to contest it, we'd hear it in the response.

20 I just want to move the case along. It -- the --
21 it -- the request by you was filed right after Christmas, and
22 it said you'd be filing it shortly. "Shortly" means a lot of
23 different things to a lot of different people. But we're now
24 in late April, and it's time to either -- either move ahead
25 with discovery or move ahead with --

1 And it's all paper discovery at this point. So even
2 if there's another half of the decedents' families or estates
3 that come into the case, the paper discovery is not going to
4 change.

5 I'd be more concerned about depositions taking place
6 where lawyers coming in late would say, "Well, we didn't get a
7 chance to participate in a dep, so you have to do it over."
8 That's not going to happen for a while. It's mainly paper
9 discovery, almost completely paper discovery at this point.
10 And I wanted to either get that moving or get your motion
11 filed.

12 And if the reason for -- if anyone needs discovery for
13 a -- to -- for *forum non conveniens*, it's probably the
14 plaintiffs. Your need for it, about the damages that the
15 plaintiffs may be suffering and the location of the evidence on
16 that, it's -- I would think you'd get almost unanimous
17 statements from the plaintiff that it's all overseas.

18 There was, what, one Italian? One -- everyone is from
19 Indonesia except for one Italian person?

20 MR. BARTLETT: And one -- one Italian and one Indian,
21 who was the captain.

22 THE COURT: Okay. So it's almost inevitable all of
23 your discovery is out there. And that is a factor that is
24 considered, obviously, but that factor is pretty much decided,
25 at least that -- the facts on that. So I don't want to delay

1 things for you to get discovery where we kind of know the
2 answer going forward and you can assume it as part of your
3 motion. And if it's different, plaintiffs will point it out.

4 I don't see why that would be a delay of the motion.
5 You practically wrote the motion already when you filed your
6 motion back in December. You put the key cases in there and
7 set forth at least how other courts have dealt with crashes
8 that occur overseas, and even involving Boeing.

9 So I -- I'm happy to hear what the parties want to do,
10 but I'd like to get the -- either discovery started or you
11 filing your motion and dates for it to take place so the case
12 can move along because really nothing's happened since this
13 case has been filed.

14 I have two other matters. I've got a short criminal
15 matter I want to take up and then the -- if the people from
16 Alpha Tech come back, I want to get them back in here. And
17 then hopefully you can talk about this outside among yourselves
18 a little bit and come back with a plan. But that's what I'm
19 thinking.

20 So we'll recall the case in a few minutes. But if you
21 don't -- unless someone has to be in another courtroom, you can
22 go out and have a discussion. If it's going to be loud, do it
23 down the hall. I'll have two other matters I'll hear, and then
24 we'll recall the case.

25 MULTIPLE COUNSEL: Thank you, your Honor.

1 THE COURT: Thank you.

2 (The Court attends to other matters.)

3 THE CLERK: Okay. 18 C 7686, In re Lion Aircraft.

4 THE COURT: All right. No need for everyone to state
5 their names for the record again.

6 Again, because we're only dealing with one defendant
7 and multiple plaintiffs, I'll ask first the defendants. Have
8 you had any discussions that result in any agreements or a path
9 going forward before I tell you what I'm going to do?

10 MR. SHULTZ: I think so, your Honor.

11 I believe the parties agreed -- and I would propose
12 this as a tentative schedule depending upon the things we
13 talked about -- that Boeing would file its motion for *forum non*
14 *conveniens* 45 days from now.

15 In the meantime, the parties will hold conferences to
16 try and work out discovery issues and other scheduling issues,
17 including the scope of any initial disclosures and any
18 discovery that needs to be conducted contemporaneously with the
19 *forum non conveniens* motion.

20 As I expressed to plaintiffs' counsel, it is possible
21 we will need to ask for more time than that primarily due to
22 the necessities of getting information from Indonesia on
23 foreign law aspects of the motion. They've indicated that we
24 can discuss it at the time if that becomes necessary.

25 THE COURT: All right. And let's --

1 MR. SHULTZ: Have I -- first, have I fairly --

2 MR. MARKS: When we were --

3 THE COURT: Well, let's --

4 MR. SHULTZ: And certainly they haven't committed to
5 agree to that.

6 THE COURT: All right. But that's a proposal. Can
7 any one person speak on behalf of everyone else for purposes of
8 this?

9 MR. MARKS: I think so, your Honor.

10 THE COURT: All right. And for the record, again?

11 MR. MARKS: My name is Steve Marks with Podhurst
12 Orseck.

13 THE COURT: All right. I'm going to assume you're
14 speaking on behalf of everyone. But if anyone has a different
15 view of something that you're going to disagree with Mr. Marks
16 on, when he's done talking, you can do your "me too" or your --
17 rather than "me too," but "I have something different to say."

18 But go ahead, Mr. Marks.

19 MR. MARKS: Your Honor, we didn't agree to any
20 extensions. What we did agree to is to have a Rule 16
21 conference within ten days; to suspend the briefing on the
22 sequencing of discovery because that will come in the context
23 of the scheduling order, which will address the scope of
24 discovery and the nature of the discovery disputes; that we
25 would serve our initial requests and which would tee up the

1 issue so that the Court will be advised specifically as to the
2 areas of dispute in a concrete manner, and specific requests
3 will help the Court deal with that issue; and 45 days for their
4 motion for *forum non conveniens* dismissal, with the
5 understanding we weren't going to have any further extensions.

6 When we were talking, Mack and us, we were talking
7 15 or 30, and then we compromised at 45. But I don't think any
8 of the plaintiffs contemplated additional time before -- beyond
9 the 45.

10 THE COURT: Well, I'll give them 45 days to file it.
11 If they have a motion they make to extend it and there's good
12 cause to extend it, I will.

13 MR. MARKS: Okay.

14 THE COURT: I recognize -- you should understand that
15 it's a long time coming, and I'm not likely to grant a motion
16 for extension absent a very particularized reason that is
17 essential to the preparation of your motion.

18 You've filed these before in other cases. Every case
19 is different, I understand, but the law is the same. And as I
20 said, in your original motion in December, you set forth the
21 key cases that deal with this issue anyway.

22 So 45 days is when, Sandy?

23 THE CLERK: June 14th.

24 THE COURT: Okay. So file it by June 14th.

25 Without knowing what it looks like, I'm not going to

1 set a response date at this time because we're going to have a
2 lot of -- I assume -- many more plaintiffs' attorneys in. And
3 I don't want to get 30 responses. I want to get one or, at
4 most, two if there's some other view that people have. Let's
5 talk -- we'll talk about that in a minute.

6 You agree on having a Rule 16 conference in ten days?

7 MR. SHULTZ: Yes, your Honor.

8 THE COURT: Okay.

9 That's when, Sandy?

10 THE CLERK: May 10th.

11 THE COURT: Okay.

12 And you should prepare a scheduling order based on
13 that conference. It may be all by agreement. There may be
14 areas of disagreement. I get them both. And if you disagree,
15 just set forth the dates that each side proposes for certain
16 discovery.

17 I agree with the idea that typically the discovery at
18 this point relates to *forum non conveniens* issues. But I'm
19 puzzled on -- the paper discovery that Boeing's going to have
20 to provide is going to be the same whether the case proceeds
21 here or proceeds in Indonesia. I don't know the Indonesian
22 discovery rules, but I expect any judicial system that you're
23 going to rely upon and say is a fulsome one where plaintiffs
24 will get their day in court is also going to be one that allows
25 for a full disclosure of relevant documents by the defendant.

1 So I'm -- keep that in mind when you have your discussions.

2 I'm not prejudging it, and I'm sure there will be
3 disagreements. And I'll let you know what I think once I see
4 your scheduling order, proposed scheduling order.

5 When do you expect to submit a proposed scheduling
6 order?

7 MR. SHULTZ: Seven days after the conference.

8 MR. MARKS: Seven days is fine, your Honor.

9 THE COURT: All right. So ten days for the conference
10 and then, Sandy, seven days after that is what?

11 THE CLERK: That's the 17th.

12 THE COURT: Okay. So a scheduling order by that date,
13 which either is agreed or has your areas of disagreement set
14 forth.

15 All right. We should -- what is the practice on a
16 multi-plaintiff case where you have -- such as this on how you
17 organize yourselves on the plaintiffs' side?

18 MR. MARKS: Typically in air crash disasters, unlike
19 class actions, we have successfully had cooperation with
20 counsel where we don't have a structure. We have agreed as a
21 group to speak with one voice. You made that clear in your
22 March 5th hearing. And we've done so, and I think we will
23 continue to do so.

24 We have communicated on a regular basis. We know one
25 another, respect one another. And so unless we get to the

1 point where your Honor's feeling like we're not doing that in
2 an efficient way, we would like to keep it as an informal
3 structure where one of us or two of us will speak at different
4 times about different issues the Court may have.

5 THE COURT: Yeah, I'm fine with that. I just don't
6 want to -- I don't want to get multiple briefs when many of
7 them may just repeat what the other has said. It's not good
8 for you --

9 MR. MARKS: No.

10 THE COURT: -- because it doesn't focus on the key
11 issues. It's not good for the defendants because they're
12 responding to multiple briefs in their reply. And it's -- I
13 don't want a lot of wasted paper.

14 MR. HART: As the Court notes, we were able to file a
15 joint motion with respect to requesting that Boeing file its
16 FNC. We would expect to be able to do the same. And there was
17 great cooperation for that motion.

18 THE COURT: Good. Okay. Well, I appreciate that.

19 And I'm not saying it has to be. If someone has a
20 response to any aspect of this case that is peculiarly
21 different than that of other plaintiffs, you're free to do so.
22 I just appreciate your cooperating and doing it as you have up
23 to now and continuing that.

24 All right. Well, I think what's going to happen
25 between now and the time you file your motion is more

1 plaintiffs coming into the case. I think there's a -- what
2 might make sense is to have a status a short time after you
3 file your motion.

4 At that time you'll have had a chance at least to read
5 it over and tell me when you expect to be able to file a
6 response. And we'll set a reply date too.

7 MR. SHULTZ: Your Honor, I believe we had a status set
8 for late June already in connection --

9 MR. BARTLETT: That's correct.

10 MR. SHULTZ: -- with the motion to sequence discovery.
11 Perhaps we would keep that date for that purpose.

12 THE COURT: Sure. When is this brief due?

13 THE CLERK: June 14th.

14 MR. MARKS: The brief is due June 14th.

15 THE COURT: All right. And what's our status?

16 MR. BARTLETT: I believe it was June 27th.

17 MR. MARKS: Twenty --

18 MS. KELLY: 24th.

19 MR. BARTLETT: 27th.

20 THE CLERK: I can --

21 THE COURT: Well, we'll look here.

22 THE CLERK: I can double-check. Hold on. Let me
23 double-check.

24 MR. SHULTZ: I believe it was set for June 27th, your
25 Honor.

1 THE CLERK: I see June 27th, 9:00 a.m.

2 THE COURT: All right. We'll keep that date. That
3 will be enough time for me to have reviewed the motion for
4 *forum non conveniens* and also for all of you to -- more
5 importantly, for you to have read it over and come back with a
6 date where you think you ought to be in a position to file a
7 response to it. We'll set a reply date at that time. We can
8 update -- you can update me on any issues.

9 You may be in before that if there's disagreements on
10 discovery.

11 I'd like to -- you all have to represent your clients,
12 but I would like to all advise you that coming into court on
13 many of these matters en masse is not necessary. You can
14 participate by phone. You can participate through other
15 counsel. I don't think your client will be -- clients will be
16 prejudiced.

17 And you will in no way be prejudiced in front of me.
18 It's not a matter of lack of interest in the case. It's just a
19 matter of being economical with clients' money and with anyone
20 else who is paying the bills.

21 So having one or two people come in to speak on behalf
22 of everyone else for scheduling purposes is just fine by me.
23 And if you feel you want to participate and don't want to come
24 in, you can do it by phone. Contact my courtroom deputy and --
25 or just read the transcript. Easy enough to do that.

1 So I'd prefer that. But you're all welcome, of
2 course. I know many of you come from out of town, and it's not
3 necessary to come back in for what will often be routine
4 statuses.

5 All right. So absent my having to weigh in on the
6 scheduling order -- which I expect I will. But absent that,
7 you'll come back in late June. If I do have to weigh in on the
8 scheduling order, I'll set it for a status to address that.
9 And we'll give you some notice on that. And, again,
10 representatives are fine rather than everybody.

11 What else do we need to discuss today?

12 MR. MARKS: There's only one other issue, and that is
13 the sequencing motion of discovery should be -- in light of
14 what your Honor is ruling and what we've agreed -- is now
15 suspended, or there's no longer need for briefing, at least.

16 THE COURT: Yeah, it's just entered and continued.

17 MR. MARKS: Okay.

18 THE COURT: I won't rule on it until -- it may be moot
19 once you come up with your scheduling order. But we'll keep it
20 pending, just enter and continue it.

21 I had a couple questions in just looking over. I
22 reread the motion to sequence discovery. And maybe you're not
23 in a position to answer this, but I'm going to ask the
24 questions, and you can tell me.

25 Is Boeing going to contest liability?

1 MR. SHULTZ: Your Honor, at this point Boeing is not
2 admitting liability.

3 THE COURT: All right. Well, that's a very lawyerly
4 answer, at which -- and that's a big question. And I -- I'm
5 not -- I don't want to put you on the spot, but it's a question
6 I have in light of public statements that anybody who reads a
7 paper has read from the company. And if you're going to
8 contest liability, so be it. If you're going to -- if this is
9 more of a damage case, that's important too.

10 That's a huge decision and one you don't have to make
11 now and one that I'm raising not for you to answer today, but
12 just it seems like an obvious question.

13 MR. SHULTZ: Certainly, your Honor. There will be a
14 clear answer by the time we file our *forum non conveniens*
15 motion.

16 THE COURT: Okay.

17 Experts in this case. And I'm basing this based on
18 some of the representations you made in the motion to sequence
19 discovery.

20 Does anyone expect experts to be anything other than
21 U.S.-based or possibly European-based as opposed to Indonesian
22 experts?

23 MR. SHULTZ: Your Honor, we would expect to present an
24 affidavit from an expert on Indonesian law and procedure in
25 connection with the *forum non conveniens* motion. If the case

1 embraces issues other than that, I don't know that we know for
2 sure --

3 THE COURT: All right.

4 MR. SHULTZ: -- which experts would be required.

5 THE COURT: I'm thinking of technical experts more
6 than legal experts and whether -- typically -- I haven't -- I
7 think I've only had one other air crash case, but I think
8 logically most experts on the liability portion are going to
9 come from the United States or possibly Europe -- I'd be
10 surprised if they come from elsewhere -- and wondering if
11 people know at this point there's Indonesian technical experts.

12 MR. BARTLETT: Your Honor, at least for my group of
13 plaintiffs, I can tell the Court that everyone will be from the
14 United States.

15 THE COURT: All right. I -- and I -- no one has to
16 answer that now. But I -- I wouldn't be surprised if that were
17 the case, although you note in your motion that there are
18 Indonesian authorities investigating this. What's the status
19 of that investigation?

20 MR. SHULTZ: They issued their preliminary report
21 30 days after the accident. I believe they are continuing to
22 investigate. And I don't have any other information.
23 Certainly -- I don't have any other reliable information about
24 when they expect to complete their investigation.

25 THE COURT: Is that knowable?

1 MR. BARTLETT: They're actually -- they have said
2 publicly that they plan to release their final report.
3 ICAO's -- that's a one-year goal for a final report, and they
4 have publicly stated that they intend to meet that one-year
5 deadline is my understanding.

6 THE COURT: All right. So that would be next
7 November.

8 MR. BARTLETT: Yeah.

9 THE COURT: All right.

10 MR. SHULTZ: Your Honor, it also occasionally happens
11 that what happens on the one-year anniversary is a substantial
12 factual report is issued --

13 MR. BARTLETT: Right.

14 MR. SHULTZ: -- if the investigation hasn't completed
15 its analysis. So that -- I would expect potentially a report
16 like that on the one-year anniversary.

17 THE COURT: Okay. You mentioned third parties
18 potentially at fault. Have you identified any third parties at
19 this stage that might be potentially at fault?

20 MR. SHULTZ: Your Honor, the investigation is
21 continuing at this time. We believe there are potentially
22 additional at-fault entities, but we're not in a position to
23 identify them for the Court at this point.

24 THE COURT: All right. How about Boeing doing its own
25 investigation? What's the status of that?

1 MR. SHULTZ: Boeing is participating in the
2 investigation being led by the Indonesians. Boeing is a
3 technical adviser to the NTSB, who is a party to that
4 investigation. And Boeing is providing support as requested by
5 the investigating authorities.

6 THE COURT: Does the NTSB in the United States
7 investigate this independently, or is it all as a partner of
8 the Indonesian authorities?

9 MR. SHULTZ: The NTSB acts as a party to the
10 Indonesian-led investigation.

11 THE COURT: Okay. As to Boeing itself, though --
12 again, I just read the newspapers, but I think they've
13 indicated they're doing their own internal investigation. The
14 planes are grounded, so they're looking at how to get them back
15 in the air.

16 Is that something that is going to be something you're
17 either going to turn over, or is that going to be part of
18 discovery? I'm sure the plaintiffs are going to want to see
19 it.

20 MR. SHULTZ: At this point, your Honor, I don't have
21 an update as to the status of whatever internal investigation
22 Boeing may be conducting. Certainly they are making efforts to
23 enhance the safety of the aircraft and to return the aircraft
24 to the air.

25 THE COURT: All right. Because one of the

1 representations you made in your motion was that if this case
2 were, in fact, transferred to Indonesia, you would stipulate to
3 turn over all information that documents -- make witnesses
4 available that -- in Indonesia so that there's no problem
5 obtaining discovery if there is an Indonesian proceeding or
6 proceedings that took place.

7 I don't know whether the -- there's some type of
8 privilege that would attach to Boeing's review, internal
9 review. And I don't know whether Indonesian law would treat
10 that differently than American law. And I raise this not to
11 get an answer but at least alert you to something I'm thinking
12 about that you ought to address in your motion.

13 MR. SHULTZ: Understood and appreciated, your Honor.

14 THE COURT: Okay. You should also address something I
15 raised at the very beginning on whether or not there are
16 documents or information that would address liability that
17 would be available through U.S. court processes but wouldn't be
18 available through Indonesian processes, in other words, if I
19 transfer the case. Your legal experts should talk about how
20 expansive discovery is in Indonesia and how it equates with
21 discovery under the Federal Rules of Civil Procedure.

22 MR. SHULTZ: Certainly we would be -- we'll be
23 prepared to address that.

24 I would note for your Honor, though, that appellate
25 courts considering *forum non conveniens* cases have generally

1 not held that a failure of a foreign jurisdiction to have full
2 U.S.-style discovery renders that forum either inadequate or
3 unavailable to the plaintiffs.

4 THE COURT: It's not dispositive, but it's a factor.
5 It's still discretionary with me, and it's a factor I'd view
6 as -- per appellate law, I wouldn't view it as a dispositive
7 issue, but it's a factor you ought to address because, absent
8 clear direction that it's something I can't consider, I'm going
9 to -- logically, it makes sense to consider it.

10 If the appellate courts have said it is absolutely not
11 to even be considered, so be it. Make that part of your
12 motion.

13 MR. SHULTZ: We'll certainly address that in our --

14 THE COURT: Okay.

15 MR. SHULTZ: -- motion, your Honor. Thank you.

16 THE COURT: All right.

17 All right. I think those are all the questions I had.
18 Are there anything else -- I'll start first, again, with the
19 defendants. Anything else you want to raise?

20 MR. SHULTZ: No, your Honor.

21 THE COURT: Anything from plaintiffs?

22 MR. MARKS: No, your Honor.

23 THE COURT: Okay. Well, thank you all.

24 MULTIPLE COUNSEL: Thank you.

25 (Concluded at 10:05 a.m.)

C E R T I F I C A T E

I certify that the foregoing is a correct transcript of the
record of proceedings in the above-entitled matter.

/s/ LAURA R. RENKE

May 6, 2019

LAURA R. RENKE, CSR, RDR, CRR
Official Court Reporter